WO IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA Allen Rude, No. CV-11-1966-FJM-PHX Plaintiff, **ORDER** VS. Intel Corp. Long Term Disability Plan;)
Intel Corp.; Aetna Life Insurance Co., Defendants. The court has before it plaintiff's motion to compel discovery (doc. 31), defendants' response (doc. 33), and plaintiff's reply (doc. 34). Defendant Intel Corporation sponsors a self-insured employee disability benefits plan (the "Plan") and has delegated claims administration to defendant Aetna Life Insurance Company. Plaintiff filed this action after Aetna denied his application for long-term disability ("LTD") benefits.

The parties agree that the relevant standard of review in this case is abuse of discretion. Although courts are generally limited to the administrative record when reviewing a case on its merits for abuse of discretion, <u>Abatie v. Alta Health & Life Ins. Co.</u>, 458 F.3d 955, 970 (9th Cir. 2006), courts have discretion to consider extrinsic evidence when a conflict of interest exists. A structural conflict of interest exists where the plan

administrator both administers and funds the plan. Metropolitan Life Ins. Co. v. Glenn, 554 U.S. 105, 112, 128 S. Ct. 2343, 2348 (2008); Abatie, 458 F.3 at 967. If the administrator is operating under a conflict of interest, "that conflict must be weighed as a factor in determining whether there is an abuse of discretion." Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115, 109 S. Ct. 948, 957 (1989) (quotation omitted). Therefore, limited discovery is permitted to determine "the nature, extent, and effect on the decision-making process of any conflict of interest." Abatie, 458 F.3d at 970. In weighing a conflict of interest, courts will consider factors such as "evidence of malice, of self-dealing, or of a parsimonious claims-granting history." Id. at 968.

Plaintiff seeks the following discovery ostensibly related to a conflict of interest: (1) the number of disability claims assessed by the 4 medical examiners who reviewed plaintiff's claim, as well as the percentage of approved versus denied claims for each medical reviewer (Interrogatory 4); (2) the amount paid to each medical reviewer during 2011 (Interrogatory 5); and (3) the percentage of initial LTD claims approved by the Plan over a period of 3 years, (Interrogatory 7), as well as a production of any related reports (Request for Production 8).

Defendants contend that no structural conflict of interest exists because Intel has retained Aetna, a third-party claims administrator, to make claims decisions. Therefore, defendants argue that our review is limited to the administrative record and the requested discovery should be denied. <u>Id.</u> at 970.

A structural conflict of interest is not necessarily negated by contractually delegating authority to a third-party administrator where, for example, the employer exerts influence over the administrator's decision making. Plaintiff argues that although Intel has delegated claims administration to Aetna, a conflict nevertheless exists because he speculates that Aetna has adopted a parsimonious approach to managing claims. See Complaint ¶ 5.

While the independence of Aetna's medical examiners may be relevant, the examiners' compensation alone will not demonstrate bias. Plaintiff makes no attempt to explain how this evidence will bear fruit and there is no obvious correlation between a

Case 2:11-cv-01966-FJM Document 35 Filed 09/19/12 Page 3 of 3

medical examiner's compensation and his propensity for bias. 1 We conclude that 2 Interrogatory No. 5 is not reasonably calculated to lead to the discovery of admissible 3 evidence relevant to the issue of conflict of interest. 4 While we are also doubtful whether the information sought in Interrogatories 4 and 5 7, and Request for Production 8–the approval rates for LTD claims by the Plan generally, and 6 by each of the reviewing medical examiners-will produce evidence of conflict, we 7 nevertheless grant the motion to compel, as modified by plaintiff's motion. Given plaintiff's 8 claim that Aetna has adopted a parsimonious approach to managing claims, it is conceivable 9 that a disproportionate percentage of denied claims may indicate bias. 10 IT IS ORDERED GRANTING IN PART AND DENYING IN PART plaintiff's 11 motion to compel (doc. 31). The motion to compel a response to Interrogatory 5 is DENIED. 12 The motion to compel responses to Interrogatories 4 and 7, and Request for Production 8, as 13 modified by plaintiff's motion, is GRANTED. Defendants' responses are due on or before 14 September 28, 2012. DATED this 18th day of September, 2012. 15 16 17 18 United States District Judge 19 20 21 22 23 24 25 26 27

28